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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, *et al.*,

Plaintiffs,

v.

GEORGIA-PACIFIC CORRUGATED
LLC,

Defendant.

Case No. C 07 3944 SBA

**DEFENDANT'S MOTION TO CHANGE
TIME; 30-DAY EXTENSION OF TIME TO
COMPLETE MEDIATION**

Courtroom: 3

Judge: The Hon. Sandra B. Armstrong

Pursuant to Rules 6-3 and 7-11 of the Local Rules for the United States District Court for the Northern District of California, Defendant Georgia-Pacific Corrugated, LLC ("G-P"), hereby moves for an Order extending the deadline for completion of mediation to May 25, 2008. The instant Motion is based on the discussion herein, all papers on file in this action, and, if the Court deems a hearing on this motion to be necessary, on evidence and argument presented at that hearing.

I. INTRODUCTION

G-P requests this 30-day extension because conducting Janet Stege's deposition after mediation would cause substantial harm to the mediation process, and, consequently, to both G-P and Plaintiffs. Stege's deposition testimony will be absolutely critical, if the parties are to have a concrete basis for exploring possible settlement options at the mediation. Further, this 30-day extension is necessitated by the fact that G-P agreed, in February 2008, to stipulate to a four-week extension for Stege to file her Reply brief in support of her motion to intervene ("Motion").

1 **II. STATEMENT OF FACTS**

2 **A. The Mediation Deadline Is Currently April 25, 2008.**

3 The EEOC filed the instant lawsuit on August 1, 2007. *See* Docket No. 1.¹ On
4 October 30, 2007, the EEOC and G-P agreed to try to mediate within 90 days. *See* Docket No. 14.
5 On November 30, 2007 the Court set a discovery cut-off for September 2, 2008, a motion cut-off for
6 October 21, 2008, and a jury trial for December 8, 2008. *See* Docket No. 17. On January 15, 2008,
7 after Stege filed her Motion, the EEOC and G-P filed a stipulated proposed order to continue the
8 mediation deadline to April 25, 2008. *See* Docket No. 23. On February 25, 2008, the Court agreed
9 to continue the mediation deadline to April 25, 2008. *See* Docket No. 34.

10 **B. Stege Filed Her Motion To Intervene One Day After Stege's Deposition Was**
11 **Scheduled To Commence.**

12 On October 31, 2007, G-P and the EEOC filed a Joint Case Management Statement,
13 which noted that Stege was seeking to intervene in the action with her own private counsel, and that
14 G-P would oppose any motion to intervene. *See* Docket No. 15 ¶ 4. Stege first met with an attorney
15 on December 28, 2007. Docket No. 20 ¶ 3 (Decl. of Kathryn Burkett Dickson in Supp. of Mot.).

16 On January 8, 2008, Ms. Dickson contacted G-P's attorneys to inform G-P that Stege
17 would be filing a motion to intervene and that Ms. Dickson would be attending Stege's deposition,
18 then scheduled for the very next day, January 9, 2008. (Declaration of Margaret Hart Edwards
19 ("Edwards Decl.") ¶ 2). As G-P had stated in the Joint Case Management Statement, G-P told Ms.
20 Dickson that it intended to oppose any motion to intervene, and that the deposition should be
21 continued until such motion was decided by the Court. *Id.* ¶ 3. The deposition noticed for January
22 9, 2008, was, therefore, taken off calendar. *Id.*

23 **C. At Stege's Request, G-P Agreed To Stipulate To Continue, To April 1, 2008, The**
24 **Hearing On Stege's Motion, Originally Set For March 4, 2008.**

25 Stege filed her Motion on January 10, 2008. *See* Motion at 1. The hearing on Stege's
26 Motion to Intervene was then scheduled for March 4, 2008. *See id.* Thus, Stege's Reply in support
27

28 ¹ All citations to the Docket are made consistent with the corresponding citations in the Court's Order (filed April 9, 2008) granting Janet Stege's Motion to Intervene.

1 of her Motion was due on February 19, 2008. *See* Local Rule 7-3(c).

2 On February 12, 2008, G-P filed an Opposition to Stege's Motion. *See* Docket No.
3 26. At Stege's request, based on Ms. Dickson's unavailability due to a trial, G-P agreed to stipulate
4 to continue the hearing on Stege's Motion to April 1, 2008. Edwards Decl. ¶ 4. The Court granted
5 Stege's request for a continuance by order filed February 19, 2008. *Id.*

6 On March 18, 2008, Stege filed her Reply brief. *See* Docket No. 41. At that time,
7 anticipating that Stege's Motion would be resolved on or around the hearing on April 1, 2008, the
8 parties had set Stege's deposition for April 7 and 8, 2008 and had conducted a pre-mediation
9 teleconference. *See* Docket No. 42, ¶ 5 (Suppl. Decl. of Kathryn Burkett Dickson in Supp. of Mot.);
10 Edwards Decl. ¶ 5.

11 **D. Stege's Deposition, Scheduled To Commence On April 7, 2008, Was Taken Off**
12 **Calendar As The Parties Awaited A Decision On Stege's Motion To Intervene.**

13 On April 3, 2008, not knowing whether Stege's Motion — the reason that Stege's
14 deposition was originally taken off calendar — would be granted, G-P's attorneys proposed to the
15 EEOC that the parties continue Stege's deposition to later in April, as follows:

16 As the court has taken the motion to intervene under submission, and
17 we have no ruling, we believe that it would be premature to proceed
18 with the deposition of Ms. Stege on Monday and Tuesday of next
19 week. I'd like to propose that we try to reschedule the deposition for
20 April 21 and 22, in the hope that we have a ruling by then, one way or
21 the other, and we can get the deposition before the mediation on April
22 24, 2008. Will those dates work for you? If not, please give me
23 alternative dates.

24 Edwards Decl. ¶ 6 (emphasis supplied). The EEOC agreed to continue Stege's deposition, but it was
25 not possible to conduct the deposition on April 21 and 22, so as to complete the deposition before
26 the mediation. *Id.*

27 **E. G-P Has Requested A Stipulation To Extend The Mediation Deadline, But Has**
28 **Not Yet Heard Back From Plaintiffs' Counsel.**

On April 8, 2008, G-P requested that the parties set Stege's deposition for April 24
and 25, 2008, and that the parties stipulate to a 30-day extension to complete mediation. Edwards
Decl. ¶ 7. On April 9, 2008, the same day that the Court issued its Order granting Stege's Motion,
G-P was informed that Plaintiffs' would likely oppose this request for a 30-day extension. *Id.* G-P

1 then informed Plaintiffs' counsel that it would file the instant motion today, April 10, 2008. *Id.*

2 **III. DISCUSSION**

3 G-P respectfully requests that the Court grant a 30-day extension, until May 25, 2008,
4 for the Parties to engage in mediation, so that Stege's deposition can take place *before* the mediation.

5 **A. Substantial Harm To All Parties, And To The Mediation Process Itself, Would 6 Result If The Parties Were Requires To Mediation Before Stege's Deposition.**

7 The effectiveness of mediation depends entirely on the parties' ability to freely
8 exchange both information and arguments. The mediator's task is to find the needle in this haystack
9 — to help the parties see that settlement is possible in a dispute that, prior to mediation, seemed
10 inexorably bound for costly litigation.

11 Here, a mediation conducted before the deposition of Janet Stege would likely
12 amount to a waste of time for Stege, the EEOC, G-P, and the mediator. This case depends to a *very*
13 large extent on Stege herself — her medical condition, her work history, her ability to perform her
14 job and her view on G-P's mandatory overtime policy. Absent Stege's testimony as to these matters,
15 the parties and the mediator will have absolutely no concrete basis for resolving this dispute.

16 In addition, a post-mediation deposition would necessarily be clouded by the
17 arguments raised and positions taken at the mediation. Plaintiffs would have every incentive to use
18 the mediation merely for strategic purposes, namely, to prepare for Stege's post-mediation
19 deposition.

20 **B. Good Cause Exists For Filing The Instant Motion And A 30-Day Extension To 21 Complete Mediation Will Not Negatively Effect The Schedule Of This Case.**

22 As set forth above, Stege's deposition, set for April 7 and 8, 2008, was taken off
23 calendar because the Court had not yet issued its Order on Stege's Motion. Thus, when the
24 deposition was taken off calendar, the Parties still did not know whether the Court would grant
25 Stege's Motion — the very reason why Stege's deposition was taken off calendar in the first
26 instance, in January 2008.

27 The Court's Order on Stege's Motion did not come earlier (*i.e.*, before April 7, 2008)
28 because G-P had agreed to grant Stege a *four-week* extension (from February 19, 2008 to March 18,

2008) to file her Reply brief in support of her Motion. Absent this extension, the Court likely would have issued its Order on or about March 4, 2008, the date originally scheduled for the hearing on Stege's Motion.

G-P understands that Plaintiffs will oppose the instant motion. However, G-P believes that no mediation can succeed when one side is not ready to mediate, and G-P is not ready to mediate. A 30-day extension of the April 25, 2008 deadline would not negatively impact the schedule for the case, because it would not prevent the parties from serving all written discovery requests in time to meet the fact discovery cutoff on September 2, 2008.

IV. CONCLUSION

For the foregoing reasons, G-P respectfully requests that this Court order a 30-day extension of time, until May 25, 2008, for the Parties to complete mediation.

Dated: April 10, 2008

Respectfully submitted,

/s/ Margaret Hart Edwards

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LITTLER MENDELSON
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GEORGIA-PACIFIC CORRUGATED LLC